

COMMITTEE AMENDMENT FORM

DATE 5/29/07

COMMITTEE CD/HR

PAGE#(S) 14 & 15, 6, and 4

ORDINANCE# 07-O-0362

SECTION(S) 18, 7, and 2

Tree Protection Ordinance

RESOLUTION# _____

PARAGRAPH _____

AMENDMENTS:

1. To delete Section 18 in its entirety. Section 18 allows removal of one tree per every five years from certain residential properties.
2. To delete certain words in Section 7(a)(1)(A) and replace with the following words in bold. The new Section 7(a)(1)(A) shall read:

“(a) Appeals from the decisions of administrative officials.

(1) Who may appeal

- (A) For a decision by a city administrative official based on the Tree Protection Ordinance regarding tree(s) on private property, an appeal may be made by any person who is aggrieved by the decision and who resides or owns property or a business ~~within 300 feet of the property on which the tree(s) at issue are located, except that for trees with a 36 DBH or greater, any aggrieved person who resides or owns a business in the City may appeal,~~ **within 1,500 feet of the property on which the tree(s) at issue are located,** except that appeals may not be made for decisions made by the city arborist pursuant to subsection 158-101(h) of this article. The appeal may be made only if the appellant is able to identify on the notice of appeal (as described in subsection 158-65 (3)(C)) the specific section of the Tree Protection Ordinance that the appellant believes was misinterpreted or misapplied by the city administrative official, and the way in which the appellant believes the section should be interpreted or applied; and/or any facts material to the city administrative official's decision that the appellant believes were misinterpreted or misunderstood.”

3. To amend the Parking Lot Requirements section, Section 2, by changing and restoring the percentage of the paved area for landscaping requirement from 5% to the current level of **10%**.

COUNCILMEMBER HOWARD SHOOK

AS SUBSTITUTED AND AMENDED (May 29, 2007) BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE AMENDING THE TREE PROTECTION ORDINANCE TO MAKE NUMEROUS CHANGES THERETO, INCLUDING: ADDING AND CHANGING DEFINITIONS; ALTERING THE PARKING LOT REQUIREMENTS; ALLOWING FOR TREE RECOMPENSE CREDIT FOR CERTAIN FEE SIMPLE LAND CONTRIBUTIONS TO THE CITY; MODIFYING THE PENALTIES SECTION OF THE ORDINANCE; ALTERING THE QUALIFICATIONS OF WHO CAN SERVE AS A TREE CONSERVATION COMMISSION BOARD MEMBER; PROVIDING A MONTHLY HONORARIUM OF \$75.00 FOR TREE CONSERVATION COMMISSION BOARD MEMBERS; ALTERING THE REQUIREMENTS FOR WHO MAY APPEAL AN ARBORIST'S DECISION REGARDING TREE(S) ON PRIVATE PROPERTY; CHANGING THE TIME LIMIT IN WHICH SOMEONE CAN APPEAL AN ARBORIST'S DECISION REGARDING TREE(S) ON PRIVATE PROPERTY; ALTERING THE TIME PERIOD DURING WHICH A PERSON MUST MAINTAIN A NEWLY PLANTED TREE; AND FOR OTHER PURPOSES.

WHEREAS, the most recent Tree Protection Ordinance, which is codified in the Atlanta Code of Ordinances, section 158-26 through section 158-110, was approved by the Atlanta City Council on January 6, 2003 and signed by the Mayor on January 13, 2003, and has since been amended ("Tree Protection Ordinance" or "Ordinance"); and

WHEREAS, enforcement of the Tree Protection Ordinance by the Bureau of Buildings, Office of Parks and the Tree Conservation Commission has revealed areas of the Ordinance that may be improved; and

WHEREAS, in June 2005, the Atlanta City Council passed a resolution, 05-R-1086, establishing a Tree Ordinance Task Force that would be responsible for evaluating the current Tree Protection Ordinance and making necessary revisions thereto; and

WHEREAS, the Tree Ordinance Task Force met, evaluated the current Tree Protection Ordinance, and recommended changes. These changes were the basis of an amendment to the Ordinance as described in 06-O-0205, passed by the Atlanta City Council on February 8, 2006 and approved by the Mayor on February 14, 2006; and

5/29/2007

WHEREAS, throughout 2006, the Department of Planning and Community Development studied the Ordinance and identified numerous ways in which the Ordinance could be improved. The Department of Planning and Community Development has recommended amendments to the Ordinance to help clarify ambiguities, and facilitate the permitting process for development and tree removal from private property within the City.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:

Section 1: The definitions section of the Tree Protection Ordinance, Section 158-26, is hereby amended as follows:

Immediately after the definition of "*Buildable area*", a new definition shall be added as follows: "*City* shall mean city of Atlanta."

The term "*City arborist*" shall be modified by changing the words "department of planning development and neighborhood conservation" to "department of planning and community development".

Immediately after the definition of "*Cover area*", a new definition shall be added as follows: "*Critical root zone* shall mean Root save area, as defined below."

The term and definition of "*Destroy*" shall be deleted in their entirety and replaced with the following: "*Destroy* means any intentional or negligent act or lack of protection that is more likely than not to cause a tree to die within a period of five years, as determined by the city forester or city arborist. Such acts include, but are not limited to: performing grade changes (including lowering or filling the grade) that affect more than 20 percent of the root save area; trenching of roots; cutting, girdling or inflicting other severe mechanical injury to the trunk, roots or other vital sections of the tree; removing in excess of 20 percent of the live crown of the tree; inflicting damage upon the root system of a tree by the application of toxic substances, including solvents, oils, gasoline and diesel fuel; causing damage by the operation of heavy machinery; causing damage by the storage of materials; and/or deliberately or negligently burning or setting fire to a tree. In addition, topping, tipping, or any similar improper pruning practices will automatically be deemed as destruction of a tree."

Immediately after the definition of "*Diameter at breast height*", a new definition shall be added as follows: "*Disease* means any fungal, bacterial, or viral infection that will result in the death of the tree, as determined by the city forester or city arborist. Disease shall also mean any fungal, bacterial or viral infection that has progressed to the point where treatment will not prevent the death of the tree, as determined by the city forester or city arborist. In order for the city forester or city arborist to deem that a tree has a disease, the person requesting such determination must present a lab report identifying and presenting the etiology (the cause and origin) of the fungal, bacterial or viral infection."

Delete the term "*Drip line*" in its entirety.

5/29/2007

The term "*Injury*" shall be modified by changing the word "*Injury*" to "*Injure*", by deleting the words "improper pruning practices", and by adding the following after the word "including": "injurious tree climbing practices, spiking, trimming, flush cutting, incursion into a designated root save area,".

Immediately after the definition of "*Pine*", a new definition shall be added as follows: "*Private arborist* means any person who is not employed by the City of Atlanta, and who is a Georgia Registered Forester, or at a minimum, certified by the International Society of Arboriculture (ISA) as an arborist and a member in good standing of the ISA."

Immediately after the new definition of "*Private arborist*", a new definition shall be added as follows: "*Private arborist report* means a typed report that is submitted and signed by a private arborist, as defined above, and that at a minimum clearly states the arborist's name, contact information and qualifications, and identifies the site address and each individual tree to be considered by the city forester or city arborist."

Immediately after the definition of "*Private property tree*", a new definition shall be added as follows: "*Protective Pruning* means pruning to elevate branches/limbs that are likely to be damaged by construction activities. Pruning must not exceed 20% of the live crown. Protective pruning is not an ISA term."

Immediately after the new definition of "*Protective pruning*", a new definition shall be added as follows: "*Pruning* means that definition of the term as set forth in both the most recent International Society of Arboricultural pruning standards and guidelines and American National Safety Institute 300.33. At no time shall trimming, topping, tipping or flush cutting of trees be deemed a form of "Pruning".

Immediately after the definition of "*Saved tree*", a new definition shall be added as follows: "*Silvicultural prescription* means any typed site or individual tree prescription developed by a private arborist, as defined above, that is aimed at preserving a tree. Prescriptions must include without limitation: the private arborist's name, signature, and contact information; the site address and individually identified trees at issue; a harvesting or stand improvement plan, soil and foliar analysis/treatment, schedule of treatment, fertilizer application, soil amendments, pesticide application with a copy of the pesticide labeling, and pruning. Trimming, topping, tipping or flush cutting of trees will not be accepted as a part of any silvicultural prescription."

Immediately after the definition of "*Tree replacement plan*", a new definition shall be added as follows: "*Tree structure* means branch and trunk architecture that result in a canopy structure that resists failure."

Immediately after the new definition of "*Tree replacement plan*", a new definition shall be added as follows: "*Trimming* means cutting a stem to an indiscriminate length, as determined by the city forester or city arborist. While trimming is unacceptable, pruning- the act of cutting stems at nodes- is permissible. "

Section 2: The Parking Lot Requirements section of the Tree Protection Ordinance, Section 158-30, is hereby modified as follows:

5/29/2007

The first paragraph shall be deleted in its entirety and replaced with the following: "The owner of any surface parking lot that is being built and/or resurfaced, and that will have a total of 30 or more parking spaces, whether primary or accessory in use, and whether commercial or noncommercial, must present a plan to the city arborist for approval, indicating that the parking lot will meet the minimum barrier curb and landscaping requirements as follows:"

Subsection 158-30(4) shall be modified by adding the following immediately after the last sentence of that subsection: "The Director of the Bureau of Buildings, in consultation with the City Arborist, shall have the authority to grant a variance from the requirements of this subsection if: the parking lot existed prior to 1977; and the Director of the Bureau of Buildings finds that the applicant's circumstances meet the requirements set forth in subsection 158-30(15); and the Director of the Bureau of Buildings finds that it is impossible to achieve the minimum landscaping requirement." For surface parking lots with fewer than thirty spaces, this variance may reduce or completely eliminate the amount of landscaped area required. For surface parking lots with thirty or greater spaces, this variance may reduce the landscaping requirement, but in no event shall the parking lot be permitted to have landscaped area that is less than **10%** of the paved area.

Subsection 158-30(6) shall be modified by removing the word "ivy" from the second sentence.

Subsection 158-30(13) shall be modified by adding at the end of the sentence the following " , but only with the approval of the city arborist."

Subsection 158-30(15) shall be modified by changing "bureau of planning" to "bureau of buildings".

Section 3: The Conservation Easement section of the Tree Protection Ordinance, Section 158-32, is hereby modified as follows:

The title of this section shall be deleted in its entirety and replaced with the following:
"Conservation Easements and Fee Simple Donations."

The first sentence of section 158-32 shall be modified by adding after the words "hereby authorized" the following: " , but is not required,".

The last sentence of section 158-32 shall be deleted in its entirety and replaced with the following: "Such easements must be perpetual in duration and shall contain such other terms and provisions as the mayor or her/his designee shall deem appropriate. In addition, the mayor is authorized, but not required, to accept fee simple donations of land, the purpose of which is to preserve the land in its natural scenic landscape or in a forest use. Such donation shall contain the terms and provisions deemed appropriate by the mayor or her/his designee."

5/29/2007

Section 4: The Penalties section of the Tree Protection Ordinance, Section 158-34, is hereby modified by deleting subsection 158-34(a) in its entirety and replacing it with the following: “(a) *Legal.* Any person violating any of the provisions of this article shall be deemed guilty of an offense and upon conviction thereof shall be punished as provided in section 1-8 of the Atlanta Code of Ordinances. The tree conservation commission shall have the authority to determine when a person has violated any of the provisions of this article and shall have the authority to impose and enforce the fines described herein. Where the tree conservation commission is able to determine the exact number of trees upon which a tree protection ordinance violation occurred, a fine imposed for the first violation shall be no less than \$500, and the fine imposed for each subsequent violation shall be \$1,000. Each tree upon which a violation occurred shall be deemed a separate violation of the tree protection ordinance. Where the tree conservation commission is unable to determine the exact number of trees upon which a tree protection ordinance violation occurred, the commission shall assume a density of 1,000 inches DBH of trees per acre, and specifically shall assume that the lot contains sixty trees of 16.67 inches DBH per acre, and shall impose a fine of \$60,000 per acre of land where the offense(s) occurred. Where the subject property is smaller than one acre, the fine shall be pro rated. Each day’s continuance of a violation may be considered a separate offense. The owner of any building, structure or site, or part thereof, where anything in violation of this article exists, and any architect, builder, contractor or agent of the owner, or any tenant who commits or assists in the commission of any violation of this article shall be guilty of a separate offense.

Section 5: The section of the Tree Protection Ordinance establishing the requirements of the members of the Tree Conservation Commission, section 158-61, is hereby modified as follows:

The first full paragraph of section 158-61 shall be amended by adding after the sentence “All members shall be confirmed by the city council”, the following: “Each of the members shall contain specialized knowledge about trees, the Tree Protection Ordinance, and/or the impact of construction activities on trees.”

Subsection 158-61(3) shall be deleted in its entirety and replaced with the following: “One member shall be appointed by the mayor who is a registered architect.”

Subsection 158(6) shall be re-numbered as subsection 158(7); The subsection currently numbered as 158(7) shall be re-numbered as subsection 158(8); The subsection currently numbered as 158(8) shall be re-numbered as subsection 158(9); The subsection currently numbered as 158(9) shall be re-numbered as subsection 158(10); The subsection currently numbered as 158(10) shall be re-numbered as subsection 158(11); The subsection currently numbered as 158(11) shall be re-numbered as subsection 158(12).

There shall be a new subsection (6) added to section 158-61 that shall state the following: “One member shall be appointed by the mayor who is a private arborist.”

Section 6: The section of the Tree Protection Ordinance addressing the terms, vacancies, and compensation of the members of the Tree Conservation Commission, section 158-62, is hereby modified as follows:

5/29/2007

Subsection 158-62(a) shall be modified by deleting the sentence "All members shall serve without compensation.", and replacing it with the following: "Each member shall receive a \$75 per month honorarium, but only if the member attends at least two of the hearings and/or business meetings (or at least one of each) per month."

Subsection 158-62(b) shall be amended by deleting in their entirety the first three sentences of that subsection and replacing them with the following: "The council shall appoint seven of the fifteen tree conservation commission members as described in subsection 158-61. With regard to the citizens appointed by the paired districts, pursuant to subsection 158-61(11), the council shall appoint the three members in the following manner:".

Subsection 158-62(d) shall be shall be re-numbered as Subsection 158-62(e).

A new Subsection 158-62(d) shall be added that shall state the following: "(d) If a Tree Conservation Commission board position becomes vacant and a member is not appointed pursuant to section 158-61 within six months, the Tree Conservation Commission, by a majority vote of the remaining members, may temporarily appoint someone to the missing category until such time that a permanent board member is appointed as described in section 158-61. The person appointed by the Tree Conservation Commission need not meet the specific requirements of the vacant position, but must contain specialized knowledge about trees, the Tree Protection Ordinance, and/or the impact of construction activities on trees."

Section 7: The Tree Conservation Commission Appeals section of the Tree Protection Ordinance, section 158-65, is hereby modified as follows:

Subsection 158-65(a) shall be deleted in its entirety and replaced with the following:

"(a) Appeals from the decisions of administrative officials.

(1) Who may appeal

(A) For a decision by a city administrative official based on the Tree Protection Ordinance regarding tree(s) on private property, an appeal may be made by any person who is aggrieved by the decision and who resides or owns property or a business **within 1,500 feet of the property on which the tree(s) at issue are located**, except that appeals may not be made for decisions made by the city arborist pursuant to subsection 158-101(h) of this article. The appeal may be made only if the appellant is able to identify on the notice of appeal (as described in subsection 158-65 (3)(C)) the specific section of the Tree Protection Ordinance that the appellant believes was misinterpreted or misapplied by the city administrative official, and the way in which the appellant believes the section should be interpreted or applied; and/or any facts material to the city administrative official's decision that the appellant believes were misinterpreted or misunderstood.

- (B) For a decision by a city administrative official based on the Tree Protection Ordinance regarding tree(s) on public property, an appeal may be made by any citizen of Atlanta, any owner of property or a business in Atlanta, and/or any civic association in the neighborhood planning unit in which the tree(s) at issue are located, who is aggrieved by the decision, except that appeals may not be made for decisions made by the city arborist pursuant to subsection 158-101(h) of this article. The appeal may be made only if the appellant is able to identify on the notice of appeal (as described in subsection 158-65 (3)(C)) the specific section of the Tree Protection Ordinance that the appellant believes was misinterpreted or misapplied by the city administrative official, and the way in which the appellant believes the section should be interpreted or applied; and/or any facts material to the city administrative official's decision that the appellant believes were misinterpreted or misunderstood.

(2) Timing of appeal

- (A) Appeals regarding tree(s) on private property must be filed within five calendar days of the city arborist's preliminary decision regarding the tree(s) at issue. At the time that a permit application is filed with the city arborist regarding tree(s) on private property, the city arborist shall pre-post the property on which the tree(s) are located for a minimum of ten calendar days prior to making a preliminary decision. The pre-posting shall indicate to the public that a permit application has been filed. If and when the city arborist grants preliminary approval of the permit application, s/he shall post the property for five working days with a Final Posting, indicating to the public that preliminary approval has been granted.
- (B) Appeals regarding tree(s) on public property must be filed within fifteen calendar days of the city arborist's preliminary decision regarding the tree(s) at issue.

(3) Appeal requirements

- (A) All appeals must be filed with the clerk of the Tree Conservation Commission.
- (B) An appeal shall not be deemed filed until the clerk receives a completed notice of appeal, along with either a \$75.00 administrative fee used to help defray the administrative costs of the appeal or a hardship letter. The hardship letter must explain in detail why the appellant is unable to pay the fee and must be signed by the appellant. At its earliest convenience, but in no event later than at the appeal hearing, the Tree Conservation Commission shall determine whether to waive the \$75 fee.

- (C) The notice of appeal shall state at a minimum: the name, address, phone number, and email address (if any) of the appellant, and whether the appellant is an Atlanta citizen; if the tree(s) at issue are located on public property and the appellant is not an Atlanta citizen, whether the appellant owns property or a business in Atlanta, and if so, the address; if the tree(s) at issue are located on public property, whether the appellant is a civic association in the neighborhood planning unit in which the tree(s) at issue are located; if the tree(s) at issue are located on private property, whether the appellant owns and/or resides on property or owns a business on property located within 300 feet from the property on which the tree(s) at issue are located; the date of the decision being appealed; the name of the person(s) who filed the permit application about which the appeal is made; the address of the subject property; the specific section of the Tree Protection Ordinance that the appellant believes was misinterpreted or misapplied by the city administrative official, and the way in which the appellant believes the section should be interpreted or applied; and any facts material to the city administrative official's decision that the appellant believes were misinterpreted or misunderstood.
 - (D) An appeal may challenge the decisions regarding one property only.
- (4) After the appeal is filed
- (A) Once an appeal is filed, any activity authorized by the decision appealed shall be stayed automatically. Despite the authorization given by the decision appealed, no permits shall be issued, no trees cut, nor earth disturbed.
 - (B) The Tree Conservation Commission shall fix a reasonable time for the hearing of the appeal and shall give public notice thereof as well as prompt notice in writing to the parties in interest. Public notice shall be given by the clerk of the Tree Conservation Commission in such a manner as shall be provided for in the rules for appeals adopted by the Tree Conservation Commission, but in no event shall such notice be given less than fifteen calendar days before the date of the hearing.
 - (C) At least two weeks prior to the appeal hearing, each party shall submit to the clerk of the Tree Conservation Commission and the other parties in interest a written summary of their argument and a copy of all documentary evidence supporting their argument. This requirement shall apply to any property owner or resident, on which the subject tree(s) is located, that is not a party to the appeal, and any other person wishing to present evidence at the hearing. The parties shall submit to the Tree

Conservation Commission and the other parties in interest all rebuttal arguments and rebuttal documentary evidence at least one week prior to the hearing. Submissions of new evidence at the appeal hearing will not be accepted or considered by the Tree Conservation Commission unless a showing can be made and the Tree Conservation Commission finds that the evidence was not available one week prior to the hearing.

(5) The appeal hearing

- (A) At the hearing, any party may appear in person or by an agent or by an attorney.
- (B) At least three members of the Tree Conservation Commission must preside over each hearing. The decision on any appeal shall be determined by a majority vote of the tree conservation commission members present and voting on the particular appeal.
- (C) The Tree Conservation Commission shall decide the appeal within a reasonable time. All appeals to the Tree Conservation Commission must be concluded or resolved within two months of the initial hearing. If the appeal is not concluded or resolved within that time, the Tree Conservation Commission will issue an "appeal approved" or "appeal denied" final ruling no later than the two month deadline.

(6) Tree Conservation Commission's Ruling

- (A) The Tree Conservation Commission shall sustain an appeal upon an express finding that the administrative official's action was based upon an erroneous finding of a material fact or upon an erroneous application of law. If no such finding is made, the Tree Conservation Commission shall deny the appeal. The Tree Conservation Commission shall have the authority to reverse, affirm, wholly or partly, or modify the administrative official's decision being appealed, and to that end shall have all of the powers of the administrative official. These powers shall include, where applicable, the power to direct the issuance of a permit, provided that all requirements imposed by this article and all other applicable laws are met.
- (B) In the event that the Tree Conservation Commission rules that recompense and/or a fine should be assessed, but also finds that the amount of recompense owed or fine assessed cannot be paid as a result of financial hardship, the Commission shall have the authority to reduce the fine or recompense. The Commission shall create written guidelines by which to determine whether and to what extent financial hardship exists. These guidelines shall include a requirement that the person requesting a finding of financial hardship make a written request and provide documentary

evidence of such hardship. The specific documents to be provided shall be determined by the Commission and listed in the guidelines. The Commission shall apply these guidelines consistently any time that a hardship request is made. Where the Commission finds, based upon the hardship request, the supporting documentation, and the guidelines, that a financial hardship exists, the Commission shall have the authority to reduce or completely eliminate the amount of recompense and/or fine owed, as long as said decision is consistent with the guidelines. The Commission shall issue a written decision regarding the financial hardship request and shall provide in writing the basis for that decision.

- (C) Any person desiring to appeal a decision of the Tree Conservation Commission under subsection 158-65(b) shall notify the clerk of the Commission, in writing, of such intent within six working days of the date of the written decision of the Commission. Barring such notice of intent, the stay on the activity that was the basis for the decision appealed shall be lifted, within the constraints imposed by the Commission's ruling."

Subsection 158-65(b) shall be modified by deleting the section in its entirety and replacing it with the following: "(b) *Appeals from decisions of the tree conservation commission.* Any person aggrieved by a decision of the Tree Conservation Commission, or any City official, bureau, office, department or board affected by such decision, may appeal such decision through a writ of certiorari to the Superior Court of Fulton County, pursuant to the procedures set forth by Georgia law. The filing of an appeal in the superior court from any decision of the Commission shall not ipso facto act as a supersedeas, but the City shall abide by any supersedeas granted by Fulton County Superior Court.

Section 8: The Tree Trust Fund section of the Tree Protection Ordinance, section 158-66, shall be modified as follows:

Subsection 158-66(a) is hereby modified by deleting in its entirety the sentence that reads: "A maximum of five percent of the fund may be used for educational materials and programs.", and replacing it with, "During any given fiscal year, a maximum of five percent of the funds received by the Tree Trust Fund during the immediately preceding fiscal year or \$100,000, whichever is greater, may be used for educational materials, educational programs, and an Administrative Analyst whose primary responsibility shall be education.

Subsection 158-66(a) is hereby modified by adding immediately after the clause "and the cost of court reporter services at tree commission hearings." the following sentence: "The honoraria for Tree Conservation Commission members, as described in subsection 158-62(a), may also be paid from the fund."

Subsection 158-66(d), that addresses the method of expending tree trust fund dollars during the first three years of the fund's existence, is hereby deleted in its entirety.

5/29/2007

Section 9: The Tree Protection Ordinance is hereby modified by including diseased trees in the consideration of whether a tree is dead, dying, or hazardous. Specifically, the following changes shall be made:

The first sentence of subsection 158-101(c)(1) shall be modified by changing “Applications to remove dead, dying, or hazardous trees” to “Applications to remove dead, dying, diseased, or hazardous trees”.

The fifth sentence of subsection 158-101(c)(1) shall be modified by changing “Permits to remove dead, dying, or hazardous trees” to “Permits to remove dead, dying, diseased, or hazardous trees”.

The second sentence of subsection 158-103(f) shall be modified by changing “dead/dying/hazardous removal” to “dead/dying/diseased/hazardous removal”.

Section 10: Those sections of the Tree Protection Ordinance that address tree removal and destruction shall be amended so that the provisions also apply to tree injury. Specifically, the following changes shall be made:

The title of section 158-101 shall be changed from “**Permit to destroy or remove**” to “**Permit to remove, destroy, or injure.**”

Subsection 158-101(a) shall be amended by changing “directly or indirectly remove or destroy any tree” to “directly or indirectly remove, destroy or injure any tree”.

Subsection 158-101(b) shall be amended by changing “Permits to remove or destroy trees” to “Permits to remove, destroy, or injure trees”.

Subsection 158-101(c) shall be amended by changing “Permits to remove or destroy trees” to “Permits to remove, destroy, or injure trees”.

The first sentence of subsection 158-101(c)(2) shall be amended by changing “Applications to remove or destroy trees” to “Applications to remove, destroy, or injure trees”.

The fourth sentence of subsection 158-101(c)(2) shall be amended by changing “Applications to remove or destroy trees” to “Applications to remove, destroy, or injure trees”.

The first sentence of subsection 158-101(c)(3) shall be amended by changing “Applications to remove or destroy trees” to “Applications to remove, destroy, or injure trees”.

The second sentence of subsection 158-101(c)(3) shall be amended by changing “Applications to remove or destroy trees” to “Applications to remove, destroy, or injure trees”.

The title of subsection 158-101(d) shall be amended by changing “*permit to destroy or remove trees*” to “*permit to remove, destroy, or injure trees*”.

The first sentence of subsection 158-101(d) shall be amended by changing “application by the city to remove or destroy trees” to “application by the city to remove, destroy, or injure trees”.

The first sentence of subsection 158-101(e) shall be amended by changing “the applicant has marked all trees to be removed,” to “the applicant has marked all trees to be removed, destroyed, or injured”.

The title of section 158-102 shall be changed from “**Criteria for removal or destruction**” to “**Criteria for removal, destruction or injury**”.

Subsection 158-102(a) shall be amended by changing “No permit shall be issued for the removal or destruction of any living” to “No permit shall be issued for the removal, destruction, or injury of any living”.

The first sentence of subsection 158-103 shall be amended by changing “permit to remove or destroy trees” to “permit to remove, destroy or injure trees”.

The second sentence of subsection 158-103 shall be deleted in its entirety and replaced with the following: “The applicant shall plant replacement trees on site that equal the total number of trees being removed, destroyed, or injured, provided that where the removed, destroyed or injured trees were located on public property, the cumulative DBH of the replacement trees shall be equal to or greater than the cumulative DBH of the trees removed, destroyed and/or injured.”.

The first sentence of subsection 158-103(b) shall be amended by changing “trees removed or destroyed” to “trees removed, destroyed or injured”.

Section 11: The section of the Tree Protection Ordinance addressing permits to remove or destroy trees, section 158-101, is hereby modified as follows:

Subsection 158-101(a) shall be modified by deleting in its entirety the first sentence which reads “No person shall directly or indirectly remove or destroy any tree having a diameter at breast height (DBH) of six inches or more which is located on property subject to the provisions of this article without obtaining a permit as provided in this section.” The first sentence shall be replaced with the following: “No person shall directly or indirectly remove or destroy any tree located on public property that is subject to the provisions of this article, or any tree having a diameter at breast height (DBH) of six inches or more which is located on private property subject to the provisions of this article, without obtaining a permit as provided in this section.”

Subsection 158-101(c)(1) shall be modified by deleting “approximate diameter,” and replacing it with “its diameter within two inches of the actual diameter,”.

Subsection 158-101(c)(1) shall be modified by adding immediately prior the last sentence the following: “The permit shall be valid for six months from the date of its issuance, though the city arborist may extend the expiration date of the permit by no more than six additional months based upon extenuating circumstances, as determined by the city arborist.”

Subsection 158-101(c)(3) shall be modified by adding immediately after the first sentence the following: "Each application shall include a Silvicultural Prescription that is prepared by a private arborist. Payment of recompense for tree(s) on private property, and tree replacement for tree(s) on public property, is required for trees included in any Silvicultural Prescription that includes timber harvesting or stand improvement, except in cases where the intended harvesting or stand improvement is to reduce or prevent the spread of pests or disease."

Subsection 158-101(f) shall be modified by deleting the section in its entirety and replacing it with the following: "(f) *Time limits*. For tree(s) on public property, if no appeal is filed within 15 calendar days from the date of posting of a notice of preliminary approval upon the affected property, then the permit shall be issued in accordance with the terms of said notice of preliminary approval. For tree(s) on private property, if no appeal is filed within 5 working days from the date of posting of a notice of preliminary approval upon the affected property, then the permit shall be issued in accordance with the terms of said notice of preliminary approval. In the event that an appeal is filed within 15 calendar days for tree(s) on public property, or five working days for tree(s) on private property, from the date of posting of a notice of preliminary approval upon the affected property, no permit shall be issued until the sixth business day after the date of the tree conservation commission's written decision on the appeal, or until the appeal is voluntarily dismissed, whichever is earlier. At that time, the stay shall expire, unless a notice of intent to appeal the tree conservation commission's decision (if any) to the superior court is filed with the clerk of the Tree Conservation Commission pursuant to subsection 158-65(a).

Section 12: The section of the Tree Protection Ordinance regarding standards for tree replacement and removal, section 158-103, and specifically the subsection addressing the impact of conservation easements on tree recompense calculations, subsection 158-103(c)(7), is hereby modified by adding the following immediately after the last sentence of that subsection: "In addition, a fee simple donation of land that is afforested to 100 inches DBH per acre, and that is accepted by the City, will receive a credit of \$20,000 per acre, pro rated, against recompense fees, but only if the City dedicates the land for a use that will preserve the land in its natural scenic landscape or in a forest use."

Section 13: The Protection of Mature Trees section of the Tree Protection Ordinance, section 158-104, shall be modified by removing the word "mature" from the title and the body of said section.

Section 14: The Site Plan section of the Tree Protection Ordinance, section 158-105, and specifically the subsection addressing the general requirements of the site plan, subsection 158-105(a), shall be modified by deleting the following sentence: "Such plan shall denote each tree to be saved, lost or destroyed, required tree protection fences for trees to be saved, and the proposed tree replacement plan." The sentence shall be replaced with the following three sentences: "Such plan shall denote each tree to be saved, lost or destroyed, the percentage of root save area that will be impacted, the required tree protection fences for trees to be saved, and the proposed tree replacement plan. The proposed tree replacement plan shall set forth the manner in which the newly planted trees will be watered, for example, manually, drip irrigation, Gator bags, etc. In addition, the proposed tree replacement plan shall have attached a copy of a paid maintenance contract if applicable."

5/29/2007

Section 15: The tree maintenance section of the Tree Protection Ordinance that establishes the period of time in which replacement trees must be maintained, section 158-108, shall be modified by deleting “one year from the date of planting”, and replacing it with “two years from the date of planting”.

Section 16: The exemptions provision of the Tree Protection Ordinance, section 158-109(1), shall be amended by adding immediately after the first sentence the following: “Any property owner or resident who reasonably believes and can demonstrate that a tree on her/his property presents imminent hazard or danger to the health, safety and welfare of the public, may contact the city arborist or her/his designee by phone to inform the city arborist of the emergency. Based upon the information provided by phone, the city arborist or her/his designee may give verbal approval of the tree’s removal. Within five working days of said approval, the owner, resident, or her/his agent must provide to the Department of Planning and Community Development’s Arborist Division photos of the tree at issue along with a Tree Removal application. Failure to follow these procedures may result in an assessment of recompense and fines. In addition, should the photos and application, and any other information obtained by the city arborist, cause the city arborist to find that the tree did not present imminent hazard or danger, the city arborist shall assess recompense and may impose a fine. Should the emergency be identified by the property owner or resident during non-working hours, s/he may remove the tree immediately, but must contact the city arborist or her/his designee during the next working day to discuss the emergency, and must submit the information described above within five working days of the tree’s removal. The owner and/or resident may be subject to recompense and fines under the circumstances described above in this subsection.

Section 17: The section of the Tree Protection Ordinance that addresses dead or diseased trees, section 158-110, shall be modified as follows:

Subsection 158-110(2) shall be amended by adding immediately after the first sentence the following: “In no event shall such reasonable time exceed ten working days.”

Subsection 158-110(4) shall be amended by deleting the last sentence in its entirety and replacing it with the following: “In such cases where danger to the public is imminent, the Director of the Office of Parks shall have the right, but not the obligation, to enter the property and abate the nuisance, and the reasonable costs of such work, as documented by the Office of Parks, shall be reimbursed by the Department of Planning and Community Development. The Department of Planning and Community Development shall have the authority to obtain reimbursement from the property owner.”

Section 18: Section 158-102(a) of the Tree Protection Ordinance shall be amended to include the following section which shall be codified as subsection (a)(3) d:

- d. The tree removal qualifies for a permit pursuant to section 158-101(i).

Section 19: The following two non-substantive changes shall be made to the Tree Protection Ordinance:

Section 158-29 shall be amended by replacing the word “superceded” with the word “superseded”.

Section 158-101 (e) shall be amended by replacing “(WWW.CIATLANTA.GA.US)” with “(www.atlantaga.gov)”.

Section 20: All ordinances and resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of said conflict.

5/29/2007

